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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Donna Jean Thorsted, No. CV-24-08039-PCT-DLR
10 Plaintiff,
11 v.
12 Commissioner of Social Security
13 Administration,
14 Defendant.

ORDER

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16 Plaintiff Donna Jean Thorsted applied for Social Security Disability Insurance
17 benefits, alleging disability beginning March 29, 2019. Her application was denied initially
18 and on reconsideration, after which Thorsted requested a hearing before an Administrative
19 Law Judge (“ALJ”). Following that hearing, the ALJ issued a written decision finding
20 Thorsted not disabled. (AR 17-27.) That decision became the final decision of Defendant
21 the Commissioner of the Social Security Administration (“Commissioner”) when the
22 agency’s Appeals Council denied review. (AR 1.) Thorsted seeks judicial review of that
23 decision pursuant to 42 U.S.C. § 405(g). (Doc. 1.)

24 **I. Five-Step Process**

25 To determine whether a claimant is disabled, the ALJ engages in a five-step process.
26 20 C.F.R. § 404.1520(a). The claimant bears the burden of proof for the first four steps,
27 but the burden shifts to the Commissioner at the fifth step. *Tackett v. Apfel*, 180 F.3d 1094,
28 1098 (9th Cir. 1999). First, the ALJ determines whether the claimant is presently engaging

1 in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). Second, the ALJ determines
 2 whether the claimant has a “severe” medically determinable physical or mental
 3 impairment. *Id.* § 404.1520(a)(4)(ii). Third, the ALJ considers whether the claimant's
 4 impairment or combination of impairments meets or medically equals an impairment listed
 5 in Appendix 1 to Subpart P of 20 C.F.R. Part 404. *Id.* § 404.1520(a)(4)(iii). If so, the
 6 claimant is automatically considered disabled. Otherwise, the ALJ moves to the fourth step,
 7 where he assesses the claimant's residual functioning capacity (“RFC”) and determines
 8 whether the claimant is still capable of performing past relevant work. *Id.* §
 9 404.1520(a)(4)(iv). If the claimant is not so capable, as the fifth and final step, the ALJ
 10 must determine whether the claimant can perform any other work in the national economy
 11 based on the claimant's RFC, age, education, and work experience. *Id.* § 404.1520(a)(4)(v).
 12 If not, the claimant is disabled. *Id.*

13 **II. Legal Standard**

14 This Court reviews only those issues raised by the party challenging the ALJ's
 15 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). An ALJ's factual
 16 findings are “conclusive if supported by substantial evidence.” *Biestek v. Berryhill*, 139 S.
 17 Ct. 1148, 1153 (2019) (quotation and citation omitted). Substantial evidence is “more than
 18 a mere scintilla” and “means—and means only—such relevant evidence as a reasonable
 19 mind might accept as adequate to support a conclusion.” *Id.* at 1154 (quotations and
 20 citations omitted). “When evidence reasonably supports either confirming or reversing the
 21 ALJ's decision, [the Court] may not substitute [its] judgment for that of the ALJ.” *Batson*
 22 *v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004). The substantial
 23 evidence standard is a “highly deferential standard of review.” *Valentine v. Comm'r of Soc.*
 24 *Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009).

25 **III. Analysis**

26 The ALJ found that: (1) Thorsted had not been engaged in substantial gainful
 27 activity since her alleged disability onset date; (2) Thorsted's severe impairments are
 28 fibromyalgia, degenerative changes of the low back and neck; intermittent tremor of the

1 head and neck; trigger fingers of the bilateral middle fingers; intermittent plantar
 2 neuropathy; and obesity; (3) Thorsted's impairments do not meet or medically equal the
 3 severity of one of the presumptively disabling listed impairments; (4) despite her
 4 impairments, Thorsted has the RFC to perform light work with some limitations, though
 5 she could "frequently handle, finger, and feel bilaterally;" and (5) Thorsted was not
 6 disabled because she was capable of performing her past relevant work as a loan officer.
 7 (AR 20-27.) In making these findings and reaching these conclusions, the ALJ discounted
 8 Thorsted's symptom testimony and the opinions of Thorsted's treating physician, Dr.
 9 Chelsea Presbrey (which, if credited, would have been work-preclusive), and purported to
 10 rely on the opinion of consultative examiner Anne Marie Garibaldi, PA-C, even though PA
 11 Garibaldi assessed limitations inconsistent with the performance of Thorsted's past
 12 relevant work. (AR 22-27.)

13 Thorsted argues that the ALJ failed to provide legally adequate justifications for
 14 rejecting her symptom testimony and the opinions of Dr. Presbrey. She also argues that the
 15 ALJ erred by purporting to rely on PA Garibaldi's opinion while failing to incorporate PA
 16 Garibaldi's manipulative limitations into the RFC. (Doc. 8.) In response, the Commissioner
 17 concedes that the ALJ erred by purporting to rely on PA Garibaldi's opinion without
 18 incorporating those manipulative limitations into the RFC. The Commissioner contends
 19 that it disagrees with Thorsted's arguments that the ALJ erred in his assessment of
 20 Thorsted's symptom testimony and Dr. Presbrey's opinions, but the Commissioner does
 21 not meaningfully address Thorsted's arguments on these two issues. Instead, the
 22 Commissioner argues that the Court does not need to reach these issues because, even if
 23 the ALJ erred across the board, the Court should remand for further proceedings. (Doc.
 24 12.) In reply, Thorsted contends that the Court should remand this case for an immediate
 25 award of benefits. (Doc. 13.) Thus, the issue before the Court is one of remedy: whether to
 26 remand for further proceedings or for an immediate award of benefits.

27 When faced with an erroneous agency decision, "the proper course, except in rare
 28 circumstances, is to remand to the agency for additional investigation or explanation[.]"

1 *Treichler v. Commr of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014) (quoting
 2 *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)). Remand for an award of
 3 benefits is appropriate only in exceptional circumstances where further administrative
 4 proceedings would serve no useful purpose, and the record has been fully developed. *Id.*;
 5 *Hill v. Astrue*, 698 F.3d 1153, 1162 (9th Cir. 2012). “If additional proceedings can remedy
 6 defects in the original administrative proceedings, a social security case should be
 7 remanded. Where, however, a rehearing would simply delay receipt of benefits, reversal
 8 [for an award of benefits] is appropriate.” *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir.
 9 1981).

10 The Ninth Circuit has developed the “credit-as-true” rule as a procedure for
 11 determining whether exceptional circumstances justifying a remand for benefits exist. *See*
 12 *Treichler*, 775 F.3d at 1100-01. The first step asks whether the “ALJ has failed to provide
 13 legally sufficient reasons for rejecting evidence, whether claimant testimony or medical
 14 opinion.” *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). If the ALJ has erred, the
 15 Court determines whether the record has been fully developed, whether there are
 16 outstanding issues to be resolved before a disability determination can be made, and
 17 whether further administrative proceedings would be useful. *Treichler*, 775 F.3d at 1101;
 18 *Moisa v. Barnhart*, 367 F.3d 882, 887 (9th Cir. 2004); *Varney v. Sec'y of Health & Hum.*
 19 *Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988). If the Court concludes there are no outstanding
 20 issues and further proceedings would not be useful, it may credit the testimony as true and
 21 determine whether the record leaves any uncertainty as to the outcome of the proceeding.
 22 *See NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 766 n.6 (1969). Only when these elements
 23 are met may the Court exercise its discretion to remand for a calculation of benefits.
 24 *Swenson v. Sullivan*, 876 F.2d 683, 689 (9th Cir. 1989). But even if all these elements are
 25 satisfied, the Court is not required to remand for an award of benefits. It instead may
 26 exercise its discretion to remand for further proceedings, especially if “an evaluation of the
 27 record as a whole creates serious doubt that a claimant is, in fact, disabled.” *Garrison*, 759
 28 F.3d at 1020.

1 Here, the parties agree that the ALJ harmfully erred by purporting to rely on PA
2 Garibaldi's opinion while failing to incorporate the assessed manipulative limitations into
3 the RFC. The Court also assumes for present purposes that the ALJ did not adequately
4 explain and support its rejection of Dr. Presbrey's opinions and Thorsted's symptom
5 testimony. Indeed, the Commissioner failed to develop counterarguments to those raised
6 by Thorsted in her opening brief. Still, the Court finds this is not one of those rare cases in
7 which further proceedings would serve no useful purpose.

8 Most notably, this record contains conflicting functional assessments. Dr. Presbrey
9 opined that Thorsted could sit, stand, and walk less than eight hours in a workday, was
10 limited in her use of her hands, and had other needs and restrictions that collectively would
11 have precluded all work. (AR 535-36, 677-80.) PA Garibaldi opined that Thorsted could
12 perform a range of light work with additional limitations, including only occasional
13 handling, fingering and feeling. (AR 617-19.) It is unclear from this record whether
14 someone with those limitations could work. Although the vocational expert testified that a
15 hypothetical individual who was limited to occasional handling, fingering, and feeling
16 could not perform the job of loan officer as that job is generally performed (AR 50-51), the
17 vocational expert did not offer an opinion on whether the job of loan officer as Thorsted
18 actually performed it required frequent, as opposed to only occasional, fingering, nor did
19 the vocational expert opine whether a hypothetical individual with PA Garibaldi's assessed
20 manipulative limitations could perform other jobs in the national economy. And the state
21 agency medical consultants found that Thorsted could perform a range of light work with
22 additional limitations, including frequent handling, fingering, and feeling. (AR 122-25,
23 147-50.) The ALJ—not this Court—is responsible for resolving these sorts of conflicts in
24 medical testimony, including determining credibility. *See Andrews v. Shalala*, 53 F.3d
25 1035, 1039 (9th Cir. 1995).

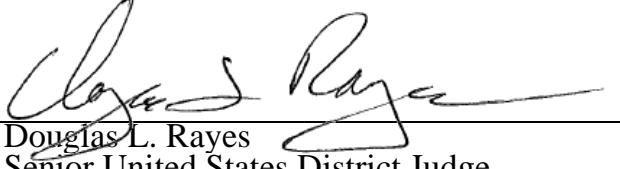
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1 **IT IS ORDERED** that the Commissioner's decision is **REVERSED**, and this
2 matter **REMANDED** for further proceedings.

3 Dated this 25th day of March, 2025.

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7 Douglas L. Rayes
8 Senior United States District Judge

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